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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

TALBOT PATRICK AND COMMERCIAL BANK OF CHARLOTTE, ADMINISTRATOR OF THE ESTATE OF ALETHIA M. PATRICK, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in the above-entitled case.

OPINION BELOW

The opinion of the District Court (R. 48–55) is reported at 186 F. Supp. 48. The opinion of the Court of Appeals (Appendix, *infra*, pp. 13–22) is reported at 288 F. 2d 292.

JURISDICTION

The judgment of the Court of Appeals was entered on March 27, 1961. (Appendix, *infra*, pp. 22–23.) By order of the Chief Justice, dated June 24, 1961, the

time for petitioning for a writ of certiorari was extended to and including July 25, 1961. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED

1. Whether fees which a taxpayer-husband paid to his attorney for services rendered in connection with a divorce proceeding—specifically, fees paid for negotiation and effectuation of a husband-wife property settlement—were properly allowed as income tax deductions under Section 212(2) of the Internal Revenue Code of 1954 (authorizing the deduction of "all the ordinary and necessary expenses paid or incurred * * * for the management, conservation or maintenance of property held for the production of income").

2. Whether the taxpayer-husband, having also paid (as directed by the divorce court) legal fees owed by the wife to her attorney for similar services, may deduct those expenses pursuant to Section 212(2).

STATUTES AND REGULATIONS INVOLVED

Internal Revenue Code of 1954:

> SEC. 212. EXPENSES FOR PRODUCTION OF INCOME.
>
> In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—
>
> (1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

* * * * * * *

(26 U.S.C. 1958 ed., Sec. 212.)

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(26 U.S.C. 1958 ed., Sec. 262.)

Treasury Regulations on Income Taxes (1954 Code):

SEC. 1.262-1. *Personal, living, and family expenses*—(a) *In General.* In computing taxable income, no deduction shall be allowed, except as otherwise expressly provided in chapter 1 of the Internal Revenue Code of 1954, for personal, living, and family expenses.

(b) *Examples of personal, living, and family expenses.* Personal, living, and family expenses are illustrated in the following examples:

* * * * * * *

(7) Generally, attorney's fees and other costs paid in connection with a divorce, separation, or decree for support are not deductible by either the husband or the wife. However, the part of an attorney's fee and the part of the other costs paid in connection with a divorce, legal separation, written separation agreement, or a decree for support, which are properly attributable to the production or collection of amounts in-

cludible in gross income under section 71 are deductible by the wife under section 212.

STATEMENT

The facts are undisputed and are fully set forth in the opinions of the District Court (R. 48–55) and the Court of Appeals (Appendix, *infra*, pp. 13–22). They may be summarized as follows:

Talbot Patrick (the taxpayer)[1] was sued for divorce in December 1955 by his former wife, Paula M. Patrick. In her complaint, Mrs. Patrick sought an absolute divorce, court supervision of division of the properties, a property settlement, child custody and attorney's fees. Negotiations were conducted by attorneys for both parties and resulted in a property settlement. The court issued a final decree of divorce, approved the property settlement and required the taxpayer to pay all attorneys' fees for both parties. (R. 49; Appendix, *infra*, p. 14.)

The property settlement covered the following: two residences; stock in the Herald Publishing Company (of which the taxpayer was president); and a parcel of real estate which was in part leased by the publishing company. Only the stock in the publishing company and the real estate leased by it were income-producing. (R. 9–13, 44; Appendix, *infra*, pp. 14–15.)

Prior to the property settlement, the taxpayer and his wife each owned 28 percent of the stock of the

[1] The Commercial Bank of Charlotte is party to this proceeding as the Administrator of the Estate of Alethia M. Patrick, with whom the taxpayer filed a joint income tax return for 1956.

publishing company. Their oldest son owned 9 percent outright and an additional 7 percent was held in trust for him. Each of the other two children of the marriage had a 14 percent interest in trust. With respect to the income-producing real property, the taxpayer had an 80 percent undivided interest and his wife had a 20 percent undivided interest. (R. 17, 19; Appendix, *infra*, p. 14.)

The settlement agreement provided that the taxpayer would purchase his wife's 28 percent interest in the publishing company subject to the condition that the stock would pass to the children on taxpayer's death or, if the stock were sold by him, that the proceeds would go to the children. (R. 12–13; Appendix, *infra*, pp. 14–15.) The agreement further provided that the interests of both taxpayer and his wife in the income-producing real property would be placed in a trust, the income from which would go to the wife during her life with remainder to the children. (R. 9–10; Appendix, *infra*, p. 15.)

The attorneys' fees incurred by the parties for the divorce action and settlement agreement were $12,000 each. The total of $24,000 was paid by the taxpayer pursuant to the settlement agreement and divorce decree. The fees were allocated, by agreement of counsel and the parties, as follows: $4,000 for the divorce; $4,000 for placing the real estate in trust ($3,200 of which was charged to the taxpayer and $800 to the wife); and $16,000 for rearranging the stock ownership and control of the publishing company. (R. 34–35, 49; Appendix, *infra*, p. 15.)

In 1956, the taxpayer claimed a deduction of $19,200, representing his share of the fees for placing the real estate in trust and both his and his wife's fees for rearranging the stock interests. The deduction was disallowed by the Commissioner and the deficiency in tax paid. (R. 50–51; Appendix, *infra*, pp. 15–16.) Upon suit for refund, the District Court allowed the deduction (R. 51; Appendix, *infra*, p. 16), and the Court of Appeals affirmed (R. 74; Appendix, *infra*, p. 22).

REASONS FOR GRANTING THE WRIT

Like the decision of the Court of Claims in *Gilmore* v. *United States*, decided June 7, 1961, in which we are concurrently filing a petition for certiorari, this case raises questions as to the deductibility of legal expenses which are incurred in connection with a divorce proceeding. Although there are differences between the two cases, it would seem appropriate that the Court consider the problem in its variant aspects. Moreover, this case, like *Gilmore*, involves a conflict of decisions.

1. (*a*) The court below reconciles its holding in favor of deductibility with the decision of this Court in *Lykes* v. *United States*, 343 U.S. 118 (denying a deduction for legal fees incurred by a taxpayer in contesting a gift tax deficiency) on the ground that the taxpayer here was not contesting his liability to his wife but was paying his lawyer to find a way in which he could meet his liability without impairing his income-producing property. On this basis, the court concludes that the taxpayer comes within

Section 212(2), which authorizes the deduction of ordinary and necessary expenses incurred in the "management, conservation or maintenance of property held for the production of income." This analysis, we believe, gives insufficient weight to the two principal factors stressed in the *Lykes* decision: *first*, that if the proximate cause of the expenditure is a personal or family matter (a heading which certainly includes a divorce settlement as well as an intra-familial gift), the provision denying the deduction of personal, family or living expenses controls; *second*, that the language and history of Section 23(a)(2) (the predecessor of Section 212(2)) show that it is a provision of narrow compass—one designed to allow deduction of routine management or conservatory expenses which are of an essentially business nature, *e.g.*, the cost of managing personally held securities, albeit they are not incident to the taxpayer's regular trade or business.

Moreover, the decision below is in direct conflict with *Lewis* v. *Commissioner*, 253 F. 2d 821 (C.A. 2d). In attempting to distinguish *Lewis*, the court below erroneously assumed (Appendix, *infra*, p. 18) that all of the legal fees disallowed in that case had been "spent in resisting legal separation proceedings and liability." It appears, however, from the *Lewis* opinion that the husband's legal fees were not incurred in resisting the wife's right to a separation, which he conceded (p. 823), but were attributable principally to resisting her financial demands and to effecting "the adjustment of their respective property rights"

(p. 824). Moreover, the Second Circuit, in *Lewis*, expressly declined (p. 826) to follow *Baer* v. *Commissioner*, 196 F. 2d 646 (C. A. 8th), which had allowed the deduction of legal fees in a divorce case on the theory that they had been incurred by the husband "not to prevent the payment of the liability due Mrs. Baer but to * * * adjust the method of satisfying that liability * * *" (196 F. 2d at 651).[2]

(*b*) Passing the point that the legal expenses incurred by taxpayer arose out of a personal or family matter, we believe that the court below has attempted to draw a line which ignores the realities and will continue to produce confusion. The court treats the expenses as costs incurred in working out the "manner" of separating the property of husband and wife. But the settlement in this case, as in virtually

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[2] The Second Circuit's comment on the *Baer* decision reads as follows (253 F. 2d at 826):

> * * * In Baer the legal expenses sought to be deducted were incurred in connection with an uncontested divorce proceeding in which the sole issue was the form and amount of alimony to be paid to the taxpayer's wife. The property of the taxpayer consisted mainly of stock in a corporation of which he was president and which provided him with the chief source of his income. The financial demands made by the wife were such that the taxpayer would have been unable to meet them without altering his interest in the corporation. The court held that under these circumstances the legal expenses were incurred for "the purpose of conserving and maintaining this income-producing property," 196 F. 2d 646, 651. With all deference, we cannot reconcile this decision with that of the Supreme Court in Lykes v. United States, supra: hence we decline to follow it. * * *

It seems evident from the court's summary of *Baer* that it would no more readily agree with the decision below.

all such cases, determined the content of the settlement—"what" and "how much"—as well as the mode of transfer. So far as the publishing company stock was concerned, the husband did not take his share and the wife hers. An agreement was reached whereby the husband acquired the wife's shares for a price, thus assuring his continuing control of the company. Significantly, an important condition was attached—that the children were to have a remainder interest in all of the husband's shares, both those previously held and those acquired under the settlement purchase. As to the real property involved, the husband completely relinquished his 80 percent undivided interest, placing it in trust for the wife during her life, with the remainder to the children. It seems patent, therefore, that the settlement was not mere property management: it determined rights and liabilities—those of the husband, the wife and the children. In our view, the case sharply illustrates the proposition that the adjustment of intra-familial obligations is typically a matter far removed from the subject matter of Section 212(2), *i.e.*, from the ordinary expense of oversight of income-producing property.[3]

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[3] As indicated above, the legal fees involved here were paid for services in negotiating a settlement agreement under which the taxpayer (1) *acquired* some income-producing property (additional stock in the newspaper publishing business) and (2) *relinquished* his interest in a piece of real property. An expense of acquiring property is a part of the cost of the property and therefore a capital expenditure instead of a deductible expense. And since relinquishing property is the antithesis of conserving property, an expense attributable to its relinquishment cannot qualify (in the absence of a sale or exchange) for a deduction.

2. This case involves a second question (one not involved in *Gilmore*) as to which there is also conflict. The Court of Appeals has ruled that the taxpayer is entitled to deduct, in addition to fees paid his attorney, fees paid to his wife's attorney—this, on the ground that the expenses were "reasonably and proximately related to the management, conservation and maintenance of property held for the production of income" (Appendix, *infra*, p. 16). But since the wife's legal fees were for services to a party whose interest in the husband's property was adverse to the taxpayer's, those fees cannot possibly be deemed a cost of conserving the taxpayer's income-producing property. A similar claim for the wife's legal fees was summarily rejected by the Second Circuit in *Lewis* v. *Commissioner*, citing (253 F. 2d at 828) *Mugruder* v. *Supplee*, 316 U.S. 394, which held that if "X" pays taxes imposed upon "Y" he may not claim the income tax deduction which would have been available to "Y". In allowing a deduction for the wife's attorneys' fees, the decision below is also in conflict with *Baer* v. *Commissioner*, 196 F. 2d 646 (C.A. 8th), which restricted the deduction for legal fees to those paid to the husband's attorney.[1]

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[1] In *Baer*, the husband sought to justify the deduction of the fees he paid to the wife's attorney on the theory that they constituted alimony. The Eighth Circuit disagreed. On this point, see, to similar effect, *Richardson* v. *Commissioner*, 234 F. 2d 248 (C.A. 4th) and *Norton* v. *Commissioner*, 192 F. 2d 989 (C.A. 9th).

In *Owens* v. *Commissioner*, 273 F. 2d 251 (C.A. 5th), cited by the court below, a deduction for legal fees paid by the taxpayer-husband to his wife's attorney was allowed on the ground that the fees were paid for services rendered to the taxpayer. Although that case is distinguishable, we do not concede its correctness.

In separation or divorce proceedings, the husband commonly assumes the duty to pay the wife's legal fees or is required to do so by decree of court. Thus, this branch of the decision below also involves a question which is bound to recur with some frequency.

CONCLUSION

For the reasons stated above and in the petition filed in the companion *Gilmore* case, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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JULY 1961.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8259

TALBOT PATRICK AND COMMERCIAL BANK OF CHARLOTTE, ADMINISTRATOR OF THE ESTATE OF ALETHIA M. PATRICK, DECEASED, APPELLEES

v.

UNITED STATES OF AMERICA, APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, AT ROCK HILL. C. C. WYCHE, DISTRICT JUDGE

(Argued January 25, 1961. Decided March 27, 1961.)

Before SOPER, and HAYNSWORTH, Circuit Judges, and LEWIS, District Judge.

LEWIS, *District Judge*:

This is an action to recover income taxes paid under a deficiency assessment arising from the disallowance of a deduction for legal fees paid to taxpayer's and his former wife's attorneys for services rendered in connection with a property settlement incident to a divorce of the parties.

The District Court for the Western District of South Carolina, hearing the case without a jury,

sustained the contentions of the taxpayer, 186 F. Supp. 48, and the Government appealed.[1]

We adopt the findings of fact by the District Court which are substantially as follows:

The taxpayer was sued for divorce. The wife sought an absolute divorce, court supervision of the properties, a property settlement, child custody and attorney fees. The taxpayer neither admitted nor denied the alleged grounds for divorce. He did not testify at the trial. Extended negotiations were carried on by attorneys for both parties, culminating in a property settlement. The trial court in South Carolina granted the wife an absolute divorce, approved the property settlement and ordered the taxpayer to pay all attorney fees for both parties, provision for which had also been previously agreed upon.

At the time of the institution of the divorce proceedings and for some years prior thereto the taxpayer was the operating head of the Herald Publishing Corporation. He owned 28% of the stock and his wife owned 28%. The eldest son owned 9% and the balance thereof was held in trust for the use and benefit of the children. The only other income-producing property was real estate (a building mainly occupied by the publishing corporation). The taxpayer had an 80% undivided interest therein and the wife had a 20% undivided interest.

The pertinent portion of the settlement agreement provided the taxpayer would purchase the wife's 28% interest in the publishing corporation stock at fair market price, conditioned upon the further agreement that the stock acquired from the wife, together with the taxpayer's stock in the publishing corpora-

[1] The Government did not appeal the constructive dividend issue decided in favor of the taxpayer.

tion (56%) would pass to the children on his death, or if the stock was sold prior thereto, the proceeds would become the property of the children. The undivided interests of the taxpayer and his wife in the income-producing real estate were placed in trust for the children, subject to a lease to the publishing corporation for a term of years.

The attorney fees incurred by the parties for the divorce action and settlement agreement were $12,000.00 each, or a total of $24,000.00, $4,000.00 of which was for handling of the divorce, $4,000.00 for placing the real estate in trust ($3,200.00 of which was charged to the taxpayer and $800.00 to the wife), and $16,000.00 for the rearranging of stock ownership and control of the Herald Publishing Corporation. Prior to the institution of the divorce proceedings the taxpayer, because of family unity, controlled the publishing corporation and was editor and publisher of the newspaper and drew salaries therefrom.

During the pendency of the divorce proceeding there was more than a possibility the control of the publishing corporation would be sold and that the income-producing real estate might be partitioned and/or sold. Prospective purchasers of the publishing corporation were interviewed by the wife's attorneys. The wife made no immediate threat upon taxpayer's operation or control of the newspaper and did not seek to enjoin or encumber his interest therein. The eldest son appeared to favor the mother in the marital difficulties and the wife and children were very much opposed to the apparent remarriage of the taxpayer.

The taxpayer contends that that portion of the attorney fees paid for legal services rendered solely in connection with the property settlement was deduct-

ible pursuant to Title 26, United States Code, Section 212(2) (1954 ed.).[2]

The District Court found the legal fees in the amount of $3,200.00 and $16,000.00 were reasonably and proximately related to the management, conservation, or maintenance of property held for the production of income and were therefore an allowable deduction to the taxpayer. We agree.

The Government insists however, that legal fees paid in connection with a divorce proceeding, accompanied by a property settlement, are incurred in relation to the dissolution of a personal family relationship, and that Title 26, United States Code, Section 262 (1958 ed.)[3] specifically denies a taxpayer a deduction with respect to a personal or family expense. Such is correct, in those cases where the expenses incurred were paid for legal services in representing the parties in a divorce proceeding, or in contesting the liability accruing as a result thereof. In this case $4,000.00 in legal fees were incurred in the handling of the divorce proceeding. No deduction or claim therefor was made. The taxpayer incurred additional legal fees in the amount of $3,200.00 for services rendered in connection with the preparation of the trust agreement and the leasing of the income-producing real estate, of which he owned a 4/5th undivided interest, and $16,000.00 in additional legal

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[2] "Expenses for production of income. In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(2) for the management, conservation, or maintenance of property held for the production of income;"

[3] "Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses."

fees for the rearranging of the stock ownership and control of the Herald Publishing Corporation.

The Government does not deny the reasonableness of the fees or the necessity therefor. It contends: "When the distinction between immediate purpose and incidental consequence is given effect, attorneys' fees paid in relation to a property settlement under a divorce decree are necessarily nondeductible as being personal expenses, regardless of whether there is an effort by one spouse to maintain and conserve income-producing property". With this we do not agree.

The Eighth, Sixth and Fifth Circuits and Court of Claims[*] have all reached the opposite result in regard to this question. An examination of those cases indicates the legal fees were allowed as a deduction because they were not expensed to resist a liability, but were spent to find a manner in which it could be met without depriving taxpayer of his income or income-producing property.

In the Baer case the Court stated:

> "* * *. The controversy did not go to the question of the liability but to the manner in which it might be met by the petitioner without greatly disturbing his financial structure. * * *"

In the Bowers case the Court allowed a $45,000.00 attorney fee as claimed, with the statement that, as in the Baer case, "* * * there was little occasion for the services of a taxpayer's lawyers, in divorce proceedings proper, * * * such services were largely

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[*] Baer v. Commissioner, 196 F. 2d 616 (8th Cir.); Bowers v. Commissioner, 243 F. 2d 904 (6th Cir.); Owens v. Commissioner, 273 F. 2d 251 (5th Cir.); McMurtry v. United States, 132 F. Supp. 113 (Court of Claims).

devoted to adjusting the taxpayer's liability to his wife * * *."

In the Owens case the Court stated:

> "* * *. The ultimate and only fact before the Tax Court and before us was and is whether the $7,500 was actually paid to the attorney in connection with the saving of the business in which the husband was interested. * * *. In other words, the domestic dispute furnished the occasion, but not the motive, for the payment of the $7,500 to the attorney."

In the McMurtry case the Court of Claims gave the taxpayer an opportunity to show to what extent legal expenses were incurred in conservation and maintenance of property.

The Government relies mainly upon Lykes v. United States, 343 U.S. 118, and Lewis v. Commissioner, 253 F. 2d 821. Neither of these cases are in conflict with the above cited cases. In the Lykes case deductibility turned wholly upon the activities to which they were related. The taxpayer gave away stock with a fixed value and the Commissioner of Internal Revenue revalued it and assessed a deficiency. The fees were incurred in contesting this deficiency or in resisting liability.

In the Lewis case the Second Circuit refused to allow a deduction of attorney fees on the theory that such fees were spent in resisting legal separation proceedings and liability.

The other cases relied on by the Government in support of its theory are clearly distinguishable in that the facts therein recited are not analogous to the facts in this case.[5]

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[5] Harris v. United States, 275 F. 2d 238; Tressler v. Commissioner, 228 F. 2d 356; Howard v. Commissioner, 202 F. 2d 28; Smith's Estate v. Commissioner, 208 F. 2d 349; Norton

Richardson v. Commissioner, 234 F. 2d 248 (4th Cir.), likewise does not support the Government's position. In that case this Court stated:

> "* * *. It is clear that the attorneys for the husband expended no effort in the conservation or maintenance of his property, as envisioned by the statute. * * *. Their services were directed to preventing any liability being imposed upon the husband for his wife's support, and it is this for which they were paid. * * * even if any part of the fee paid by him to his attorneys could be said to be for services in conserving his property, no effort has been made to show what part of the sums paid should be allotted to that purpose. * * * unless and until it is shown what part of the sums paid them are applicable to that part of their efforts there is no basis upon which to grant a deduction.
>
> "* * *. None of the conditions which formed the basis for the decision in the Baer case exists in the case now before us."

The Government further contends however that if this case were pending in a Circuit that had followed the reasoning set forth in the Baer line of decisions, the taxpayer's claim of deduction would not be allowed because the essential factor in the application of those decisions was a threat to income-producing property.

It is true the wife, in this case, did not commit an overt act, to either enjoin, damage or encumber the taxpayer's income-producing property. This was not necessary. We conclude that all of the taxpayer's income-producing properties were in great peril until and unless a satisfactory property settlement agreement was concluded.

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v. Commissioner, 192 F. 2d 960; Douglas v. Commissioner, 33 T.C. 349; Donnelley v. Commissioner, 16 T.C. 1196;

At the time he was sued for divorce the taxpayer was a stockholder in Herald Publishing Corporation. He owned 28%, his wife 28%, their son Hugh 9%, with 7% additional in trust, and two other children owned 28% of the stock in trust. Because of the family unity which had existed, taxpayer had in fact controlled the Herald operations and had been editor and publisher of the newspaper and a director and president of the corporation and drew salaries therefrom. When the divorce suit was commenced against him practically everything he had was at stake. There was the distinct possibility that control of the corporation would be sold; in fact, the wife's attorneys were approached by prospective purchasers. It was not necessary for his wife to threaten to take from him the Herald stock. The wife, with her own stock and as a trustee jointly controlling the stock of her children, with the support of her son Hugh, controlled the corporation. With the family unity broken, this control could have been, and probably would have been, exercised by the wife to the taxpayer's detriment.

Over a period of years he had built up the newspaper and if he lost control his income therefrom would not only have been impaired, it would have been totally destroyed. In addition, upon the entry of a divorce decree the wife acquired the right to partition and/or force the sale of the income-producing real estate which housed the publishing corporation, thereby jeopardizing its very existence.

The husband had no defense to the merits of the divorce. He did not contest or resist the liabilities accruing to the wife and children and the legal fees claimed as a deduction were not expended for that purpose. They were spent by the taxpayer for services rendered through long and continued negotiations,

designed to find a means in which the taxpayer could meet these liabilities without destroying his income and his income-producing status.

The fact that the agreement between the parties was concluded in apparent harmony and without any overt act on the part of the wife to take away, or threaten to take away, the income-producing property of the taxpayer, does not say that there was no risk to the taxpayer. The danger to his income and income-producing property was there until the matter was concluded, and it was not concluded until there was a readjustment of his income-producing holdings.

The Government further contends, however, that even though the legal fees incurred by the taxpayer in maintaining and conserving his income-producing property are deductible under Code Section 212(2), the fees paid his wife's attorneys are under no circumstances deductible. The taxpayer's liability for his legal fees and the legal fees for his wife would not have been incurred except for the necessity of the long and extended negotiations culminating in the preservation, maintenance and conservation of the taxpayer's income-producing property. They were incurred for that purpose and that purpose only.

The only test of deductibility provided for in the statute is whether or not the expenses were reasonable and proximately related to the management, conservation and maintenance of income-producing property. It makes no difference to whom they are paid.

In the Lykes case, supra, the Supreme Court stated:

> "* * * deductibility turns wholly upon the nature of the activities to which they relate. * * *."

And in the Owens case, supra, the Court said:

> "We do not think that the fact that the payment here was made to the wife's attorney has any determinant force. * * *."

In view of the findings of fact of the District Court and the undisputed testimony in behalf of the petitioner we are of the view, the legal fees in the amount of $19,200.00, which were paid by the taxpayer for the protection and conservation of his income-producing property was properly deductible as claimed. The decision of the District Court is accordingly

Affirmed.

JUDGMENT

Filed and Entered March 27, 1961

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8259

TALBOT PATRICK AND COMMERCIAL BANK OF CHARLOTTE, ADMINISTRATOR OF THE ESTATE OF ALETHIA M. PATRICK, DECEASED, APPELLEES

vs.

UNITED STATES OF AMERICA, APPELLANT

APPEAL FROM the United States District Court for the Western District of South Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of South Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

March 27, 1964.

MORRIS A. SOPER,
United States Circuit Judge.